

OPINION

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Gravel-pit bill is step backward

Apparently, there are no easy answers when it comes to gravel pits.

At least, no easy answers that can't be made complicated.

That seems to be the case with House Bill 557, which would make a slight change to Montana Code 76-2-209, and by doing so greatly diminish the ability of local officials to determine if gravel pits are appropriate in a particular locale.

We frankly thought this was all resolved in the 2005 Legislature. In response to a dispute in Flathead County, the Legislature passed a law that gravel pits and concrete and asphalt plants "may be reasonably conditioned or prohibited" on a site that is "zoned as residential, as defined by the board of county commissioners."

This provided county commissioners just the flexibility they needed to judge for themselves whether a neighborhood was residential, and therefore whether or not gravel pits were an appropriate use therein.

Mind you, until 2004, it was well understood that counties could and should regulate gravel pits by imposing conditions that would protect neighbors' rights to safe roads, a safe environment and general welfare. Unfortunately, at that time, Flathead County zoning administrator Forrest Sanderson decided that residents who didn't live in "R" residential zones did not enjoy those same rights.

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So the 2005 Legislature restored the ability of counties to protect their citizens by putting appropriate restrictions and limits on how gravel pits could be operated. Following that law, the Flathead County commissioners then adopted a zoning text amendment in June 2005 that gave the Board of Adjustment authority to regulate gravel pits in all zoning districts that allow residential uses.

To date, that authority has been used to reject just one gravel pit and to force another one to give up its planned asphalt plant, while in the same period several other gravel pits have been approved.

In other words, there has been no abuse of discretion and no large-scale assault on the open-pit mining industry. The community at large recognizes the need for gravel pits, and the Board of Adjustment has responsibly approved projects whenever possible. The fact that a couple of projects have been rejected or limited is not a problem, but rather a sign that the board is taking its work seriously and not just acting as a rubber stamp.

Unfortunately, those few rejections have gotten the Montana Contractors Association worried, and they proposed in House Bill 557 to further restrict the authority of the commissioners to regulate gravel pits.

In particular, the bill would change the wording of the current law so that gravel pits could only be prohibited or restricted in areas which are "zoned as residential" AND are "taxed as Class Four property." Class Four property includes residential and most commercial property, which is fine, but the problem is that many large parcels located in areas which are "zoned as residential" are actually taxed as Class Three property, generally some form of agricultural or forest land.

That being the case, HB557 would get us right back into the same problem we had back in 2004 — large landowners deciding to convert their farmland to gravel pits without any conditions or control by the county and its citizens, even when located smack dab in the middle of a residential zone.

That's a bad idea. If there are some particular non-residential zones where contractors think they should have the right to introduce gravel pits without restriction, they should come right out and say so. But don't monkey with the law so that gravel pits can once again be introduced in residential zones where the public clearly doesn't want them.

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The Senate Natural Resources Committee will hold a public hearing on House Bill 557 today at 3 p.m. in Room 317A at the Capitol Building in Helena.

SENATE NATURAL RESOURCES
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HB 557